

*In the Matter of Steven R. Levine*  
DOP Docket No. 2005-1628  
**(Merit System Board, decided December 1, 2004)**

Steven R. Levine, an Administrative Analyst 2 (Management Auditor) with the Motor Vehicle Commission (MVC), appeals the attached decision of the Division of Human Resource Information Services (HRIS) which determined that he was not entitled to a paid leave of absence for volunteer service under *N.J.A.C.* 4A:6-1.18(b).

By way of background, on September 7, 2004, Mr. Levine, a member of the Manalapan Board of Health Community Emergency Response Team (CERT), requested a leave of absence pursuant to *N.J.A.C.* 4A:6-1.18. In particular, Mr. Levine indicated that he had been asked to assist the Federal Emergency Management Agency (FEMA) during its disaster relief efforts after Hurricane Frances. After consultation with a member of the Shared Services Office for the MVC (Shared Services), Mr. Levine was informed that his volunteer service with FEMA<sup>1</sup> would qualify him for a paid leave under *N.J.A.C.* 4A:6-1.18(b) which provides that:

State employees in the career or senior executive service shall be given time off with pay to perform emergency civilian duty in relation to national defense or other emergency, other than . . . [volunteer service with the American Red Cross] when so ordered by the Governor or by the President of the United States.

However, on September 10, 2004, Rudene Vaught, Manager, Shared Services 7, informed Mr. Levine that the Department of Personnel (DOP) had issued a decision denying him a leave of absence with pay pursuant to *N.J.A.C.* 4A:6-1.18, unless he was associated with the American Red Cross. In its decision, HRIS determined that *N.J.A.C.* 4A:6-1.18 only applied if an employee was a member of the American Red Cross, had a signed Presidential Order directing the employee to Florida to help with the disaster relief or if the Governor had issued an Executive Order addressing the State of Emergency in Florida.<sup>2</sup> However, HRIS indicated that “the mere declaration of a disaster by the President does not, in and of itself, qualify for paid leave.”

On appeal to the Merit System Board (Board), Mr. Levine asserts that he should be entitled to a leave of absence for his volunteer service with FEMA. In this regard, he argues that he responded to repeated calls by the State and the MVC to volunteer and become a member of CERT. Moreover, after being originally assured that he qualified for a paid leave of absence, and committing himself to join FEMA’s efforts in Florida, he was told he did not meet the standard and was denied a paid leave of absence. Mr. Levine argues that since he was originally told he “qualified” for a paid leave and made a

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<sup>1</sup> It is noted that the FEMA Citizen Corps Travel Authorization Package indicated that Mr. Levine’s assignment was a paid assignment.

<sup>2</sup> It is noted that this decision was also issued Statewide as numerous State employees had requested paid leave in order to participate in the disaster relief efforts.

commitment based on that information, the DOP should be required to honor the original decision and provide him with a paid leave of absence.

## **CONCLUSION**

In the instant matter, Mr. Levine argues that he should be provided a paid leave of absence since he was originally told he qualified for a paid leave. However, the information he received was in error. No vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). Although the Board is appreciative of Mr. Levine's actions in becoming a CERT member and volunteering his time for a paid assignment with FEMA, he does not meet the requirements for a paid leave of absence pursuant to *N.J.A.C. 4A:6-1.18*. In this regard, it is noted that since Mr. Levine is not affiliated with the American Red Cross, *N.J.A.C. 4A:6-1.18(a)* does not apply. Pursuant to *N.J.A.C. 4A:6-1.18(b)*, State employees in the career or senior executive service shall be given time off with pay to perform emergency civilian duty in relation to national defense or other emergency, *when so ordered by the Governor or by the President of the United States*. However, neither the President nor the Governor issued an order directing CERT members to active duty to participate in the disaster relief efforts in Florida. Consequently, Mr. Levine does not meet the requirements for a paid leave of absence for emergency civilian duty.

## **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.